FOR MYSORE STATE

Home (1953) Department.

RL SERIES.

G.O. NO. 3289

Dated 10.9.1953

Passed

[Despatch Abstract.]

SPECIAL.
Ref.C4.6357/53.

South Kanara Dt.Magistrate's Office
Mangalore, dated 18---8---1953.

From

Sri A. Mahalingam Chettiar, B.A.,
Dt.Magistrate of South Kanara.

ASSISTANT SECRETARY TO GOVERNMENT
22 AUG
HOME DEPARTMENT

The Secretary to Government,
Home Department, Fort St.George,
M A D R A S - 9.

CRIMINAL JUSTICE -S.C.No.8/53 on the file of Sessions Judge South Kanara -- Appeal against acquittal -- Proposals -- Submitted.

169269/25/8/53

--:o:--

The Sessions Judge, South Kanara in his judgment in S.C. No.8/53 dated 29.6.53 acquitted the accused Thomas Lewis who was charged with the murder of his father and with causing disappearance of evidence, offences punishable under Section 302 and 201 I.P.C. The acquittal was based mainly on the ground that the confession of the accused was not voluntary and that it cannot be relied upon as true. The Dt.Superintendent of Police South Kanara has recommended the filing of an appeal against the acquittal. I have consulted the Public Prosecutor South Kanara in the matter. He is of opinion that an appeal should be filed in this case. I have perused the judgment and the grounds of appeal, furnished by the Public Prosecutor. I agree with the District Superintendent of Police and Public Prosecutor that this is a fit case to prefer an appeal against the acquittal. I therefore recommend that the Public Prosecutor Madras may be instructed to file an appeal in the High Court against the orders of the Sessions Judge S.Kanara in S.C.8/1953.

2. I enclose authenticated copies in duplicate of the judgment in S.C.8/53 on the file of the Sessions Judge, report No.C1/11594/53 dated 25.7.53 of the Dt.Superintendent of Police South Kanara and grounds of appeal furnished by the Public Prosecutor S.Kanara.

Yours faithfully

For Dt.Magistrate.
20.8.53.

sr/19-8

GOVERNMENT OF MADRAS.
Home Department.

Endorsement No. 169269-Cts.IV/53-1 dated 27th August, 1953.

Referred to the Public Prosecutor, Madras for remarks.

Assistant Secretary to Government.

To the Public Prosecutor, Madras. (with enclosure to be returned with reply).

3

Copy of letter No.Cl.11504/52 dated 25.7.1952 from the Dt.Superintendent of Police, S.Kanara to the Dt. Magistrate, South Kanara.

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Sub Criminal Justice- Brahmavar Police station crime No. 32/52 U/s 302 I.P.C. S.C.No.8/52 of the Sessions court appeal against acquittal of the accused -Proposal for moving the Government - forwarded.

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(5)

In enclosing herewith two copies of the Judgement in S.C.No.8/52 of the Sessions Judge South Kanara together with a copy of the opinion of Public Prosecutor dated 20.7.1952, I request you to move the Government for preferring an appeal against the acquittal of the accused as opined by the Public Prosecutor South Kanara.

11 below

2. The case diary file in Brahmavar Police Station Crime No.32/52 is enclosed herewith for your reference and return.

(True copy).

Copy of the Opinion of ~~Public~~ Prosecutor dated 20.7.1952.

Sub: Sessions Case No.8/52 F.I.No.32/5. Brahmavar Police station.

The S.H.O.Brahmavar has consulted me about the advisibility of prefering an appeal against acquittal in the above case.

It is my opinion that in the interest of justice and administration an appeal should be preferred. The prosecution case depends on the confession of the accused and a few circumstances.

The confession has been retracted on grounds which are not true and there is ample corroboration for the confession. Our own High Court has held that a conviction can be based on a retracted confession without corroboration if the reasons given for retracting are false.

1949 M.W.N. 386

1950 M.W.N. 386.

In the present case the reasons given are not at all convincing. There are strong circumstances which materially corroborate the confession. So this matter should be taken up on appeal against acquittal.

(True copy)

For District Magistrate. 28.8.52

SESSIONS CASE NO. 8 of 1953.
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THOMAS LEWIS --- Accused.

GROUNDS OF APPEAL

1. The judgment of the learned Sessions Judge is against the probabilities and the evidence in the case.

2. The learned Sessions Judge should have accepted the confession of the accused x-18. made to the Magistrate P.W.9 as true and found the accused guilty of the offence with which he stands charged.

3. The learned Sessions Judge is not justified in holding that the interval between the evening of 29th March 1953 and 11 a.m. on 30.3.1953 was used as the accused says in importuning him to make a statement. Rather he should have accepted the version of P.W.11 that he waited until he finished to questioning the neighbours before confronting him with all (accd.) the evidence appearing against him. The evidence of P.W.11 the Sub Inspector of Police who investigated in the case clearly explains the time taken in confronting the accused with the evidence appearing against him.

4. The conculusions arrived at by the Learned Sessions Judge in Para 19 of the judgment regarding internal evidence are not quite correct. Though P.W.11 has said that the Police have questioned the accused four times P.W.11 has explained as to when and how the accused was questioned. He was first questioned at the inquest, then on 30.3.53 at 11 a.m. with regard to the evidence appearing against him, the same evening by the C.I. when he verified the investigation of P.W.11 and finally on the night of the 30th in the Brahmavar Police Station if he was willing to confess before a Magistrate. The accuse in his confession has said he was questioned by the Police only once there-by meaning that he was confronted only once with the evidence appearing against him. So it cannot be said that he was tutored by the Police to say he was questioned only once.

Further the accused could not have known

that he was in police 'custody' from the evening of the 28th. He had himself gone to the Police station come along with the police to the scene of offence had helped in taking out the body of the deceased from the water and was voluntarily with the police. So strictly speaking from the accused's point of view atleast it could not be said he was in custody before he was arrested and much less could it be said his answer in his confession that he was not in police custody before he was arrested as one that was tutored.

5. The finding of the Learned Sessions Judge that the omission of P.W.9 to explain to the accused that he was not bound to make a confession vitiates the confession by failing to ensure its voluntairness may not be correct. P.W.9 has questioned the accused both on the 1st and the 3rd of April when the accused was produced before him and was fully satisfied that the confession was voluntary. The confession was recorded only after the magistrate satisfied himself by questioning the accused that it was voluntary. The learned Sessions Judge should have held that the confession was in fact voluntary rather than hold that the omission of the Magistrate vitiates it.

6. The observation of the Sessions Judge in para 21 of the Judgment that the confession cannot be relied upon as true is not justified. The learned Sessions Judge should only have held that the accused was trying to minimise the offence specially when the accused admits in his concession that he was fully drunk and that he used the bill-hook to that cut his father and that his father fell down and died. The accused in his confession does not say how many times he cut his father the deceased. Further the accused as he admits was drunk and may not himself be aware how many times he had cut his father. For these reasons it cannot be said the confession is not accordance to facts. The learned Sessions Judge should have given due weight to this aspect of the matter and should have relied on the confession.

7. The learned Sessions Judge is not right in holding as he has done in para 22 that blood marks should have been found on the cadjan thatties in the yard. Much depends in what position th deceased was when he was cut. Moreover, the fact that to an eaaarea of 2 feet square cow-dung was smeared to erase the blood shows that within that space all the blood could have been split. Further blood was traced from the house of the accused along the foot-path to the river side in five or six places, even three days later. The learned Sessions Judge is not justified in holding that this could be from the head injury more becuase blood flowing from the head of a person who walks would not ordinarily drop on the ground.

8. The observation of the learned Sessions Judge in para 23 of the Judgment that it is unlikely that the deceased raised no cries of distriess is also not correct. For one thing the evidence is the deceased was over full with drinks a condition in which he may not be able to raise cries and then again after reciving any of the injuries he might physically not be in a condition to was raise cries.

9. The confession of the accused is fully corroborated. The accused admits even in the Sessions court that his confession upto the point of this beating his father on th head is true. The evidence of P.w.2 the wife of the accused is that her husband was not present when she got up in the night some time after she saw the accused and the deceased in the yard. Evidently the accused had gone out to dispose of the body as the accused had confessed. There was blood in the yard which was washed with cow-dung early the next morning. There was blood in five or six places along the foot path on which the accused had carried the dead body. This was there even three days later on the 30th when the police held investigation.

10. The accused conceals the fact that he had beaten the deceased or that there was a quarrel between him and the deceased even to his own sister P. .1. On the

other hand he is careful to destroy blood marks first thing in the morning. What is more the accused does not mention any of these things even to the Village Munsif to whom he merely reports that his father is missing, suppress ing everyt ing else—conduct which is consistent only with the guilt of the accused.

On the grounds already mentioned the learned Sessions Judge should have held that the confession is voluntary and fully corrobarated. We should further have held that the confession has been retracted on false grounds and should have acted on it and found the accused guilty.

(True copy)

Asst. 20833

5/6 For ~~Collector~~ Asst. Magistrate.

9

Sri V.T.Rangaswami Ayyangar,B.A.B.L., To
Public Prosecutor,
Madras.

The Secretary to Government,
Home Department,Madras.

Opn.No.202/53,dated 2nd September 1953

Sir,

Sub: Appeal against acquittal -S.C.8/53,S.J.South Kanara
Forwarding opinion.

pz aute With reference to ~~Memorandum~~ Endorsement No.169269 Cts.IV/53-1,Home, dated 27th August 1953, I have the honour to give below my opinion in the above matter.

2. The papers received for reference are returned herewith.

Judgment as (V)

Opinion.

17.1534 3/9/53

The accused was charged for the offence of murder of his father on or about 27th March 1953. The learned Sessions Judge of South Kanara came to the conclusion that the offence had not been made out against the accused beyond all reasonable doubt and that the confessional statement of the accused even though recorded under Sec 164 Criminal Procedure Code was not safe to act upon when the same had been retracted during the enquiry and trial.

Applying the test laid down by the Supreme Court in so far as retracted confessions are concerned, the learned Judge found that it was materially discrepant with the present prosecution evidence and that it was not the free or voluntary confession of the accused. The learned Judge also found that exoppt with reference to the initial beating the confession does not inculpate the accused so far as the fatal injuries are concerned and had therefore acquitted the accused. In my opinion under those aforesaid circumstances it cannot be ~~xxxx~~ stated that the reasons given by the learned Judge are so unwarranted as to compel the appellate court to interfere with the order of acquittal and an appeal is not therefore likely to be successful.

V. T. Rangaswami

Public Prosecutor.

2-9-53

2/9

Home Department

[illegible] G.O.R.No 3289 dated 10.9.53

Criminal justice – Appeal against acquittal – S.C. No 8 of 1953 on the file of the Sessions Judge, South Kanara – Application declined.

Read: From the D.M. South Kanara No Ca. 6357/53 dated 18.8.1953.

From the P.P., Madras. Gpn No 202/53 dated 2.9.1953.

Order

The Government do not consider it advisable to prefer an appeal against the acquittal by the Sessions Judge, South Kanara of the accused in S.C. No 8 of 1953 on his file.

2. A copy of the opinion of the P.P., Madras is forwarded to the D.M., South Kanara for information.

To

The D.M. South Kanara
(with copy of p9cf. and (V) in original by Regd Post)
Copy to the P.P., Madras.

Note:- The draft order above is in accordance with the opinion of the P.P., Madras at p9cf.

2. If the Govt differ from the P.P and propose to prefer an appeal, the Advocate General should ordinarily be consulted before orders preferring an appeal are issued.

p1 of (V).

3. The date of judgment is 29.6.1953
Three months time expires on 28.9.1953
Six months time expires on 28.12.1953